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Supreme Court, U.S.
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No. 95-717

IN THE
Supreme Court of the United States

OCTOBER TERM, 1995

THOMAS MAHALEK
Petitioner,

v.

KOREAN AIR LINES, CO., LTD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Must a surviving sibling prove that they were financially dependent on a decedent in order to recover damages for loss of society under the Warsaw Convention?

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No.

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THOMAS MAHALEK
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KOREAN AIR LINES, CO., LTD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI

Thomas Mahalek respectfully petitions for a writ of certiorari to review the judgment of the United States District Court for the Northern District of California.

OPINIONS BELOW

The court of appeals has not rendered an opinion. The opinion of the district court (App., *infra*, A1) is unreported. The amended opinion of the district court (App., *infra*, A2) is unreported.

JURISDICTION

Notice of Appeal was filed March 24, 1995. Appeal was properly docketed by the Ninth Circuit on March 28, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and 28 U.S.C. §2101(e). Petitioner seeks review of the case below before judgment has been entered in the Court of Appeals. The case below is of imperative public importance and requires immediate settlement in this Court.

PROVISION OF LAW INVOLVED

This case raises the interpretation of Article 17 of The Warsaw Convention, known formally as the Convention for Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000, T.S. No. 876 (1934) *reprinted in* 49 U.S.C. §1502 note.

WARSAW CONVENTION ARTICLE 17

"The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking."

STATEMENT OF THE CASE

Korean Air Lines Flight 007 strayed into Soviet airspace and was shot down on September 1, 1983. All those aboard perished. Among the passengers was Muriel A.M.S. Kole, whose brother, Thomas Mahalek ("Mahalek"), is the Petitioner before this Court.

The Petitioner filed suit against Korean Air Lines Co., Ltd. ("KAL") in the Northern District of California. Along with all other federal court actions arising out of the KAL tragedy, the Petitioner's case was transferred to the United States District Court for the District of Columbia for consolidated proceedings on the question of liability. *See In re Korean Air Lines Disaster of September 1, 1983*, 575 F.Supp. 342 (J.P.M.D.L. 1983).

Following a jury trial, KAL was found liable for "wilful misconduct" in connection with the Flight 009 tragedy. Under Article 25 of the Warsaw Convention, KAL therefore could not invoke the $75,000.00 cap on damages that would otherwise be available. The Petitioner's case was then remanded to the district court for a damages trial.[1]

Before a jury was empaneled to assess damages against KAL, the district court ruled it would follow Judge Motley's ruling as set forth in *In re Korean Air Lines Disaster of September 1, 1983*, with respect to the applicable damage law, and that Petitioner could recover for the loss of the decedent's society, and for mental injury he suffered in the aftermath of the tragedy.[2] *See* 807 F.Supp. at 1084-1088. The district court did not require that the Petitioner prove he was financially dependent on the decedent in order to recover damages for loss of society.

After hearing evidence, the jury awarded damages to the Petitioner as follows:

1. Loss of society $ 75,000

The District Court entered final judgment. (App., *infra*, A1) Pending before the District Court were Petitioner's Motion for

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[1]In the interests of brevity, some of the steps along the way of the complex multi-district proceedings have been omitted.

[2]Petitioner is not seeking review of this element of damages.

Prejudgment Interest and Bill of Costs, and KAL's Motion for Judgment as a Matter of Law.

Shortly thereafter, KAL filed a Motion to Vacate and Set Aside the Liability Judgment; Petitioner's action was re-transferred to the District of Columbia. KAL's Motion to Vacate and Set Aside the Liability Judgment was denied, and Petitioner's action was remanded back to the damage trial court. Seventeen months after entering judgment, the District Court granted KAL's Motion for Judgment as a Matter of Law, and issued an Amended Judgment, (App., *infra*, A2) Vacating the Jury Verdict. Petitioner's Appeal of the Amended Judgment is now pending in the Court of Appeals for the Ninth Circuit.

In a companion action, *Zicherman v. Korean Air Lines, Co.*, 43 F.3d 18 (1994), Marjorie Zicherman, sister and Muriel Mahalek, mother of decedent Muriel A.M.S. Kole, filed suit against KAL in the Southern District of New York. Each Petitioner sought recovery in her individual capacity, and Zicherman also sued as personal representative of her sister's estate. After hearing evidence, the jury awarded damages to the Plaintiffs which included damages for loss of society and mental injury. The district court computed prejudgment interest, and entered final judgment.

KAL noticed an appeal from the district court's final judgment, contesting all of the damages awarded on both legal and factual grounds. In an opinion dated November 3, 1994, 1994 WL 606516 (2nd Cir. N.Y.) the Second Circuit affirmed the District Court's judgment, with two important exceptions:

1. The Second Circuit ruled that damages for loss of society cannot be recovered under the Warsaw Convention unless the surviving relative was financially dependent on the decedent;

2. The Second Circuit also ruled that damages for mental injury are not recoverable under the Warsaw Convention under

any circumstances.

Because the jury had not been instructed that financial dependency was a prerequisite to recovery for loss of society, the Second Circuit examined the record for evidence of financial dependency. It found that Mahalek was not financially dependent on her daughter, and accordingly vacated all of the damages that Mahalek had been awarded. As to Zicherman, the Second Circuit found some evidence of financial dependency, and therefore remanded the case back to the District Court for a determination on this narrow question. The mental injury to Zicherman was vacated.

After the Second Circuit issued its November 3 opinion, KAL petitioned for a rehearing. On December 5, 1994, the Second Circuit withdrew its initial opinion, and filed an amended opinion. In the amended opinion, the Second Circuit ruled that the jury's awards for loss of support and loss of inheritance were also subject to a financial dependency requirement. These two awards were therefore vacated, pending further proceedings in the District Court.

Zicherman and Mahalek petitioned this Court for a writ of certiorari which was granted on April 17, 1995 (115 S.Ct. 1689.)

REASONS FOR GRANTING THE PETITION

The decision below is erroneous and the issue that it addresses is important. The decision in this case conflicts with *Sutton v. Earles*, 26 F.3d 903 (9th Cir. 1994). *Sutton*, conflicts with the Second Circuit's decisions in *Zicherman v. Korean Air Lines, Co., supra*, and *Wahlstrom v. Kawasaki Heavy Indus., Ltd.*, 4 F.3d 1084 (1993). At both the circuit court and district court level conflicting decisions have occurred. There are a multitude of cases involving the same issue that are waiting to be tried and are in need of guidance from this Court. This case, along with *Zicherman* which is now pending before this Court, is a timely and rare

opportunity to provide that guidance.

1. The case below arises out of the same event and involves the same decedent as the *Zicherman* case which is presently before this Court on writ of certiorari.

2. The opinion below raises important legal questions identical to the questions presented in *Zicherman v. Korean Air Lines, Co.*, 43 F.3d 903 (2nd Cir. 1994), which is presently pending before this Court.

3. A conflict exists among district courts and circuit courts as to whether federal damage law requires a showing of financial dependency in order to recover loss of society damages. By imposing a financial dependency requirement, the district court's and Second Circuit's ruling unduly restricts recovery. By adopting a cruel and irrational rule of law, one that is particularly inappropriate under the unique structure of the Warsaw Convention, it affords an unconscionable degree of economic protection to the airline industry where a carrier has been found liable for egregious, wilful misconduct.

4. Numerous cases arising from the KAL tragedy and the disaster at Lockerbie, Scotland are pending in Courts of Appeal and District Courts around the country. This Court should provide definitive guidance on the elements of damages recoverable under the Warsaw Convention to prevent conflicting and inconsistent results.

ARGUMENT

I. CERTIORARI SHOULD BE GRANTED BEFORE JUDGMENT BELOW BECAUSE OF THE CLOSE RELATIONSHIP OF THE QUESTION RAISED TO THE QUESTION PRESENTED IN *ZICHERMAN V. KOREAN AIR LINES, CO.*

The case below presents a question identical to the question presented in *Zicherman v. Korean Air Lines, Co.*, 43 F.3d 18 (2nd Cir 1994). This Court granted certiorari in the

Zicherman case on April 17, 1995. (115 S.Ct 1689). Petitioner in the case below, Thomas Mahalek, is brother to the Petitioners in *Zicherman*.

This Court has granted certiorari where a petition for certiorari presents a question that is identical with, or similar to, an issue already pending before this Court in another case in which certiorari has been granted. *See, Taylor v. McElroy*, 358 U.S. 918 (1958), 360 U.S. 709, 710 (1959). *See also Porter v. Dicken*, 328 U.S. 252, 254 (1946) (certiorari was granted before judgment below "by reason of the close relationship of the important question raised to the question presented in *Porter v. Lee*" (328 U.S. 246 (1946))).

The District Court followed the rule embraced by the Second Circuit: financial dependency is required to recover loss of society damages under general maritime law, although the Ninth Circuit has reached the opposite result in *Sutton v. Earles*, 26 F.3d 903 (1994). Petitioner's case is currently before the court of appeals for the Ninth Circuit.

There exists a conflict between the circuits on this issue. This Court should grant Thomas Mahalek's Petition to allow Petitioner to argue directly before this Court, to resolve a matter of great importance and to correct the District Court's error.

II. CERTIORARI SHOULD BE GRANTED TO RESOLVE CONFLICTING OPINIONS ON RECOVERY FOR LOSS OF SOCIETY DAMAGES.

The District Court followed Second Circuit precedent which drew exclusively on general federal maritime law to decide what damages are recoverable under the Warsaw Convention. The Second Circuit then followed those Circuit Courts of Appeal that imposed a financial dependency requirement for loss of society damages under general

maritime law. *See, e.g., Anderson v. Whittaker Corp.*, 894 F.2d 804, 811-12 (6th Cir. 1990); *Sistrunk v. Circle Bar Drilling Co.*, 770 F.2d 455 (5th Cir. 1985). The Second Circuit recognized, however, that the Ninth Circuit has reached the opposite result; the Ninth Circuit ruled that there is no need to establish financial dependency. *Su .on v. Earles*, 26 F.3d 903, 914-17 (9th Cir. 1994).

Although the Second Circuit's position is followed by other circuits, the rule espoused by the Ninth Circuit is more sensible, and should be adopted. Financial dependency has no rational relationship of any kind to loss of society, and it is intolerable and inhumane to suggest otherwise. A brother's loss of love and affection for his sister, as well as a parent's loss of a child will more often times occur in the absence of financial dependency. In the case below, there was ample evidence of Mahalek's loss. Mahalek did not look to his sister for financial support; as a result, the jury's finding of his loss is somehow deemed irrelevant. Had he been less self-sufficient, and insisted on support from the decedent, he would have been allowed to recover. This is an absurd result, and does not comport with any sense of justice or decency and it must not stand. More aptly stated; money should not be a prerequisite to love.

This Court has recognized that, at least for federal general maritime wrongful death actions, loss of society is recoverable. *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573 (1974). Although the issue of financial dependency was not raised under the facts of *Gaudet*, imposing a dependency requirement is inconsistent with this Court's definition of "society" as embracing a broad range of mutual benefits *each family member* receives from the others' continued existence, including love, affection, care, attention, companionship, comfort, and protection. 414 U.S. at 585 (emphasis added).

It must also be remembered that the case below was not a maritime case *per se*, but rather a Warsaw Convention case.

Although the Second Circuit drew on maritime law for some guidance in construing the Convention, it failed to take note of one special feature not found in maritime law: the damage cap. In the vast majority of international aviation accidents, Article 25 of the Warsaw Convention limits the air carrier liability to $75,000.00 per passenger. This is a tremendous economic advantage for the aviation industry, one that the shipping industry does not have. As a result, in the rare case of wilful misconduct, it is in conflict with the Convention itself to further limit liability by imposing the additional barrier of financial dependency as a prerequisite to loss of society damages.[3]

III. CASES PENDING ACROSS THE COUNTRY AWAIT A DEFINITE RULING ON DAMAGES RECOVERABLE UNDER THE WARSAW CONVENTION.

There are currently at least 31 pending cases arising out of the KAL tragedy that have not yet had a jury trial to assess damages. In addition, KAL has appeals of damage verdicts which are pending in the Second, Sixth and Ninth Circuit Courts of Appeal, as well as the District of Columbia Circuit Court of Appeals. Given the uncertainty over the elements of damages recoverable under the Warsaw Convention, the risk of inconsistent treatment of similarly situated plaintiffs is great.

It should also be noted that the bombing of Pan American flight 103 over Lockerbie, Scotland, led to a finding of wilful

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[3]For these reasons, awards for loss of support and loss of inheritance should also be unfettered by a financial dependency requirement.

misconduct by the defendant airline. *See Pagnucco et al. v. Pan American World Airways, Inc.* _____ F.3d ____ (Nos. 1280, 1281, 1282, 2d. Cir., 1994) There have been two damage trials already and there are scores of damages cases waiting to be tried in the aftermath of the *Lockerbie* decision. These cases also await definitive guidance from this Court on the damages available under the Convention. In sum, the authorities are in considerable disagreement on a matter of importance to the courts, to Thomas Mahalek, and to many other parties who are similarly situated. This case presents this Court with the opportunity to resolve a conflict among district courts and circuit courts and to bring uniformity to this area of law. Therefore, the Court should grant the petition.

CONCLUSION

Certiorari should be granted to review the decision below.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS L. MAHALEK, individually and as the heir of MURIEL KOLE,

Plaintiff,

vs.

KOREAN AIRLINES, CO., LTD.

Defendant.

C-83-4381 WHO

JUDGMENT ON JURY VERDICT

This action having come on for trial before the Court and a jury, the Honorable William H. Orrick, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

IT IS ORDERED AND ADJUDGED that:

1. Plaintiff, Thomas L. Mahalek, suffered mental anguish and grief as a result of the death of Muriel Kole.

2. Plaintiff's mental anguish and grief did not result in actual mental injury accompanied by physical manifestations or aggravation of preexisting physical conditions that physically debilitated him with grief.

3. The amount of loss of love, affection and companionship that plaintiff has suffered (a) from September 1, 1983, to date of trial is $75,000; and (b) from date of trial forward is zero.

Dated: October 28, 1993.

William H. Orrick
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS L. MAHALEK, individually and as the heir of MURIEL KOLE, C-83-4381 WHO

Plaintiff,

vs.

KOREAN AIRLINES, CO., LTD.

Defendant.

ORDER

Pending before this Court are plaintiff Thomas L. Mahalek's ("Mahalek") motions for prejudgment interest and costs and defendant Korean Air Lines Co.'s ("KAL") motion for judgment as a matter of law. The Court having considered the briefs of both parties, GRANTS KAL's motion for judgment as a matter of law and DENIES Mahalek's request for prejudgment interest and costs.

I.

Four relatives of Muriel Kole, a passenger killed on KAL Flight 007, brought wrongful death actions against KAL under the Warsaw Convention. Kole's mother and sister brought an action in the Southern District of New York before Judge Motley ("Zicherman"). Kole's husband and brother ("Mahalek") brought separate actions in this Court.

Based on principles of collateral estoppel, this Court has repeatedly followed the ruling of Judge Motley in Zicherman, who ruled on several substantive issues prior to this Court

doing so. See In Re Korean Air Lines Disaster of September 1, 1983, 807 F.Supp. 1073 (S.D.N.Y. 1992).

Because Judge Motley had ruled that non-dependent relatives of a decedent could recover loss of society damages, this Court allowed Mahalek's case to proceed to trial. The jury awarded Mahalek $75,000 for the loss of society he suffered as a result of the death of his sister on KAL Flight 007. The Court entered a judgment on the Mahalek verdict on October 29, 1993.

II.

The Second Circuit has recently ruled on KAL's appeal of Judge Motley's ruling in Zicherman. In Zicherman v. Korean Airlines, Ltd., __ F.3d __, 1994 WL 685690 (2nd Cir. 1994), the Second Circuit affirmed Motley's opinion in part, reversed in part, and vacated in part. Most significantly, it held that general maritime law, not DOHSA applied to the KAL crash. 1994 WL 685690 at *3. In terms of loss of society damages, however, it held that "Zicherman [decedent's sister] and Mahalek [decedent's mother] may recover loss of society damages only if they were dependents of Kole at the time of her death." 1994 685690 at *4. The appeals court vacated the loss of society award to Mahalek (decedent's mother) because she conceded at trial she was not dependent on her daughter. As to Zicherman (decedent's sister}, the Court remanded to the trial court for a determination as to whether she was dependent on the decedent.

In the trial before this Court, Thomas Mahalek conceded that he was not dependent on his sister for financial support. Therefore, based on the Second Circuit's ruling in Zicherman, this Court grants KAL's motion for judgment as a matter of law.

In an attempt to avoid judgment as a matter of law, Mahalek cites Sutton v. Earles, 26 F.3d 903, 917 (9th Cir. 1994) for the proposition that, in the Ninth Circuit, a plaintiff

bringing a wrongful death action under general maritime law need not show that he is dependent on a decedent to recover loss of society damages. Id.

Sutton is distinguishable from the case at hand, however, because it held only that parent plaintiffs could collect loss of society damages without regard to dependency. Id. The Ninth Circuit based this ruling in part on the fact that parents are common beneficiaries of wrongful death statutes. Id. at 915. This rationale does not apply to non-dependent siblings, however. See, e.g., Evich v. Connelly, 759 F.2d 1432 (9th Cir. 1985), cert. denied, 484 U.S. 914 (1987) (non-dependent sibling may not bring wrongful death action under the Jones Act or DOHSA).

Mahalek also argues that KAL's motion for judgment as a matter of law should not be considered because KAL did not make its motion at the close of the evidence as required by Rule 50(a). However, KAL has provided transcripts that show it moved for a "directed verdict." See Reply of Korean Air Lines Co., Ltd. to Plaintiff's Supplemental Memorandum of Points and Authorities in Opposition to Motion for Judgment as a Matter of Law, filed October 20, 1994, Ex. A. Therefore, this argument is without merit.

Additionally, Mahalek argues that KAL did not file its motion for judgment as a matter of law not later than ten days after entry of judgment as required by Rule 50(b). Judgment was entered on October 29, 1993. KAL filed its motion on November 12, 1993. When the period of time prescribed by a rule is less than eleven days, intermediate Saturdays, Sundays, and holidays are excluded in the computation. Fed.R.Civ.P. 6(a) Under this computation, the motion was timely file.

III.

Accordingly,

IT IS HEREBY ORDERED THAT:

1. KAL's motion for judgment as a matter of law is GRANTED.

2. Mahalek's motion for prejudgment interest and costs in DENIED.

DATED: March 8, 1995

WILLIAM H. ORRICK
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE
WILLIAM H. ORRICK, SENIOR JUDGE

THOMAS L. MAHALEK, INDIVIDUALLY AND AS THE HEIR OF MURIEL KOLE PLAINTIFF, VS. KOREAN AIRLINES, CO., LTD., DEFENDANT.	)	NO. C-83- 4381WHO

SAN FRANCISCO, CALIFORNIA
MONDAY, OCTOBER 25, 1993
TUESDAY, OCTOBER 26, 1993

TRANSCRIPT OF PROCEEDINGS

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CM OFFICIAL REPORTER, USDC

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SAN FRANCISCO, CA. 94102

I'LL EVER KNOW AT THE MOMENT.

MR. BROWN: I GUESS THE THREE IN CONTENTION ARE THE FIRST THREE YOU READ. IF I'M CORRECT IN UNDERSTANDING YOUR HONOR, YOU SAID YOU WOULD USE THE PLAINTIFF'S INSTRUCTION ON WRONGFUL DEATH, THE DEFENDANT'S INSTRUCTION ON GRIEF AND SORROW AND THE DEFENDANT'S INSTRUCTION ON MENTAL ANGUISH?

THE COURT: YES.

MR. BROWN: I DO HAVE SOME OBJECTIONS TO THE USE OF THOSE TWO INSTRUCTIONS BY DEFENDANT.

THE COURT: GET THEM SPECIFICALLY IN WRITING AND I WILL DEAL WITH THEM.

MR. GINGER: YOUR HONOR, JUST TO PROTECT OUR POSITION AND PRESERVE THE RIGHTS

ON APPEAL, I HAVE TO STATE THE GROUNDS FOR MY MOTION FOR DIRECTED VERDICT, AND I WOULD APPRECIATE IT IF YOU WOULD GIVE A RULING. I THINK IT'S THE SAME RULING YOU HAVE BEEN GIVING ALL ALONG.

IN ANY EVENT, WE MOVE FOR DIRECTED VERDICT ON THE GROUNDS THAT PLAINTIFF HAS NO STANDING TO BRING THIS ACTION UNDER DOHSA; THAT LOSS OF SOCIETY IS NOT RECOVERABLE UNDER THE APPLICABLE LAW, WHICH WE SAY IS DOHSA; THAT MENTAL ANGUISH AND GRIEF IS NOT RECOVERABLE UNDER THE APPLICABLE LAW, WHICH IS DOHSA, OR ANY FEDERAL COMMON LAW.

THERE IS INSUFFICIENT EVIDENCE TO LET THE CASE GO TO THE JURY ON THE ISSUE OF LOSS OF SOCIETY BECAUSE HE'S TESTIFIED THAT HE WAS NOT FINANCIALLY DEPENDENT, AND WE SAY

THAT UNDER THE LAW YOU HAVE TO BE FINANCIALLY DEPENDENT TO GET ANYTHING.

ALSO THERE IS INSUFFICIENT EVIDENCE TO LET THE CASE GO TO THE JURY UNDER YOUR RULING THERE HAS TO BE A PHYSICAL MANIFESTATION. I DON'T BELIEVE ANY OF THE MATTERS THEY TESTIFIED TO CONSTITUTE A PHYSICAL MANIFESTATION OR ACTUAL MENTAL OR PHYSICAL INJURY.

THE COURT: THE MOTION FOR DIRECTED VERDICT IS DENIED. COURT IS IN RECESS.

(TRIAL ADJOURNED)

APPENDIX D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS L. MAHALEK, individually and as the heir of MURIEL KOLE Plaintiff, vs. KOREAN AIR LINES, CO., LTD., et al. Defendants.	NO. 83 4381 WHO NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that plaintiff THOMAS MAHALEK, in the above-referenced case appeals to the Court of Appeals, Ninth Circuit, from the Amended Judgment on Jury Verdict filed March 9, 1995, and the order granting defendant Korean Air Lines' Motion for Judgment as a Matter of Law, filed March 9, 1995.

NOTICE IS FURTHER GIVEN THAT plaintiff requests the Clerk of the above-entitled Court to prepare a Clerk's transcript and designate all papers and records on file or lodged with the Court in the above-entitled action.

DATED: March 21, 1995

BROWN, MONZIONE, FABBRO, ZAKARIA & SCARLETT

BY: _____
RICHARD E. BROWN
Attorney for Plaintiff
THOMAS MAHALEK

APPENDIX E

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
121 Spear Street, P.O. Box 193939
San Francisco, CA 94105-3939

March 28, 1995

U.S. Court of Appeals Docket Number: 95-15559
Lower Court Docket No.: CV-83-04381-WHO
Short Title: Mahalek v. Korean Air Lines Co.

Dear Counsel:

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit.

The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeal docket number when corresponding with this office relative to your case. Please furnish this docket number immediately to the court reporter if you place an order, or have placed an order, for portions of the trial transcripts. The court reporter will need this docket number when communicating with this court.

THE DUE DATES FOR DESIGNATING AND FILING THE REPORTER'S TRANSCRIPT IF APPLICABLE, FILING THE PARTIES' BRIEFS AND OTHERWISE PERFECTING THE APPEAL HAVE BEEN SET BY THE ENCLOSED "TIME SCHEDULE ORDER", PURSUANT TO APPLICABLE FRAP RULES. THESE DATES CAN BE EXTENDED ONLY BY COURT ORDER. FAILURE OF

THE APPELLANT TO COMPLY WITH THE TIME SCHEDULE ORDER WILL RESULT IN AUTOMATIC DISMISSAL OF THE APPEAL.

The following information is being provided in an attempt to answer the most frequently asked questions regarding the appellate process. Please review this information very carefully. For convenience, the term "Circuit Rules" will be used for "Rules of the United States Court of Appeals for the Ninth Circuit" and "FRAP" for "Federal Rules of Appellate Procedure" will be used throughout this document.

Enclosed with this letter is an appellate processing schedule along with a case processing checklist which may be attached to your case file as an aid in monitoring case progress.

APPELLANTS/PETITIONERS WHO ARE FILING PRO SE SHOULD REFER TO THE ACCOMPANYING INFORMATION SHEET REGARDING THE FILING OF INFORMAL BRIEFS.

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
AUG 9 1995

THOMAS L. MAHALEK, individually and as the heir of MURIEL KOLE	)	NO. 95-15559
	)	
	)	REQUEST FOR
Appellant,	)	VOLUNTARY
	)	DISMISSAL
vs.	)	
	)	
KOREAN AIR LINES, CO., LTD.,	)	
	)	
Respondent.	)	
	)	

Appellant THOMAS L. MAHALEK hereby moves for a Voluntary Dismissal of the above-captioned appeal without prejudice to reinstate upon disposition of the United States Supreme Court Decision in Zicherman v. Korean Air Lines, 115 SC 1689, Docketed April 17, 1995.

Dated: August 8, 1995

BROWN, MONZIONE, FABBRO,
ZAKARIA & SCARLETT

BY:_____
RICHARD E. BROWN
Attorney for Plaintiff
THOMAS MAHALEK

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
SEP - 5 1995

THOMAS L. MAHALEK, individually and as the heir of MURIEL KOLE	)	NO. 95-15559
Plaintiff/Appellant	)	DC# CV-83-4381-WHO Northern California (San Francisco)
vs.	)	
KOREAN AIR LINES, CO., LTD.,	)	
Defendants/Appellee.	)	ORDER

Appellant's motion for voluntary dismissal of this appeal without prejudice to reinstatement upon disposition of the United States Supreme Court decision in Zicherman v. Korean Air Lines, 115 S. Ct. 1689, docketed April 17, 1995 is granted. The motion to reinstate must be filed within 28 days after the Supreme Court disposition.

A certified copy of this order sent to the district court shall act as and for the mandate of this court.

For the Court:

CATHY A. CATTERSON
Clerk of the Court

Wayne Anderson
Deputy Clerk

pro 8.28

THOMAS MAHALEK v. KOREAN AIR LINES CO. Ltd.
U. S. District Court, Northern Div. of California, No. C 83 4381 WHO

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I hereby certify that a copy of the foregoing **Petitioner, Thomas Mahalek's Petition for Writ of Certiorari** was mailed on October 26, 1995, with postage thereon fully prepaid to be placed in the U.S. mail at San Francisco, California, to all parties required to be served in said action by placing a copy thereof, enclosed in a sealed envelope, addressed as follows:

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